

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Shareholders of the Ackerley Group, Inc.
(Transferor)
and
Clear Channel Communications, Inc.
(Transferee)
For Transfer of Control of the Ackerley Group,
Inc., and Certain Subsidiaries, Licensees of
KCOY-TV, Santa Maria, CA; KTVF(TV),
Fairbanks, AK; KION(TV), Monterey, CA;
KFTY(TV), Santa Rosa, CA; KGET(TV),
Bakersfield, CA; KVIQ(TV), Eureka, CA;
KMTR(TV), Eugene, OR; KMTZ(TV), Coos Bay,
OR; KMTX-TV, Roseburg, OR; KVOS-TV,
Bellingham, WA; KHHO(AM), Tacoma, WA;
KJR(AM), Seattle, WA; KBTB(FM), Seattle, WA;
KUBE(FM), Seattle, WA; WIVT(TV),
Binghamton, NY; WIXT-TV, Syracuse, NY;
WOKR(TV), Rochester, NY; WUTR(TV), Utica,
NY; WWTI(TV), Watertown, NY; and
KGPE(TV), Fresno, CA and Associated
Television Translator Stations.

File Nos. BTCCT, BTCTTA, BTCTTL,
BTC, BTCH, BTCTTV, BTCTT,
BTCFT-20011017ACI-AED

MEMORANDUM OPINION AND ORDER

Adopted: May 24, 2002

Released: May 29, 2002

By the Commission: Commissioner Copps approving in part, dissenting in part and issuing a statement.

I. INTRODUCTION

1. On October 17, 2001, Clear Channel filed applications seeking Commission consent to the transfer of control of Ackerley Media Group, Inc. (AK Media), Central NY News, Inc., and Ackerley Broadcasting Fresno, LLC, wholly owned subsidiaries of the Ackerley Group, Inc. (Ackerley) and licensees of 16 full-service television stations, as well as two FM and two AM radio stations.1 Buckley

1 A list of the stations to be transferred, along with associated low power, Class A, and television translator stations, is attached as Appendix A. Pursuant to the merger agreement, Clear Channel will assume Ackerley's Local (continued....)

Broadcasting of Monterey (Buckley), licensee of K WAV(FM) and KIDD(AM), Monterey, CA, filed a petition to deny on November 21, 2001.² In addition, Congressman Sam Farr and Douglas F. Elznic filed informal objections, while the Minority Media and Telecommunications Council (MMTC) filed comments in support of the applications.³ Clear Channel filed oppositions to the petition to deny and two informal objections.⁴ Ackerley filed a separate consolidated opposition to the Buckley petition and the comments of Congressman Farr. On December 7, 2001, Alex Sheina filed comments requesting that the Commission either block the sale of WOKR(TV), Rochester, NY, or require the divestiture of WHAM(AM), Rochester, NY.

2. Grant of the applications will result in the creation of new radio/television combinations in Bakersfield, CA; Eugene, OR; Fairbanks, AK; Fresno, CA; Monterey-Salinas, CA; Santa Rosa, CA; Binghamton, NY; Rochester, NY; Santa Maria, CA; Syracuse, NY; and Utica, NY.⁵ Of the 11 combinations created, 5 will violate our radio/television cross-ownership rule. In these markets, Clear Channel has requested a 12-month temporary waiver in order to come into compliance. Elznic has challenged Clear Channel's radio/television cross-ownership showing in the Syracuse, NY and Utica, NY markets; opposes grant of the 12-month temporary waiver; and raises competition concerns specific to the Syracuse market. Congressman Farr and Buckley raise concerns specific to the Monterey-Salinas, CA market. Clear Channel also requests a continuing satellite exception to our broadcast television multiple ownership rule in order to permit the continued operation of KMTZ(TV), Coos Bay, OR and KMTX-TV, Roseburg, OR as satellites of KMTR(TV), Eugene, OR. For the reasons set forth below, we will grant a 12-month temporary waiver of the radio/television cross-ownership rule in the 5 affected markets, as well as the continuing satellite exception in the Eugene, OR DMA. In the Monterey-Salinas market, we will grant the proposed transfer of control of KION(TV), Monterey, CA to Clear Channel, on the condition that the existing Time Brokerage Agreement (TBA) and related arrangements between the licensee of KCBA(TV), Salinas, CA and a subsidiary of Ackerley are reformed as set forth below. Consequently, we will deny the petitions to deny and other comments to the extent set forth herein.

(...continued from previous page)

Marketing Agreements (LMAs) with the licensees of KCBA(TV), Salinas, CA and WETM-TV, Elmira, NY. Clear Channel will also acquire Ackerley's attributable interest in KFNK(FM), Eatonville, WA.

² Buckley has standing as a party-in-interest since it is a competitor of Clear Channel in the Monterey-Salinas market. *FCC v. Sanders Brothers Radio Station*, 309 U.S. 470 (1940).

³ Elznic styled his pleading as "Informal Comments to Deny." The pleading was not supported by an affidavit from someone with personal knowledge of the facts alleged and, therefore, will be considered as an informal objection pursuant to Section 73.3587 of the Commission's rules. 47 C.F.R. §73.3587.

⁴ On November 14, 2001, the Commission received a one-page comment from Brown and Cole Stores requesting that the Commission condition grant of the KVOS-TV application on retaining NewsView, a locally oriented news program. On November 21, 2001 the Commission received comments from the Northwest Air Pollution Authority and Michael Frome, Ph.D., and on November 20, 2001 and November 29, 2001, respectively, the Commission received comments from the Bellingham/Whatcom Chamber of Commerce and Industry and Representative Doug Erickson of the Washington State House of Representatives, raising identical concerns as Brown and Cole Stores. Because the Commission generally relies on market forces rather than regulatory oversight to arbitrate format changes, we will dismiss the objections. *FCC v. WNCN Listeners Guild*, 450 U.S. 582, 683 (1981) (Upholding Commission policy not to consider past or proposed format changes in its review of license transfer applications).

⁵ Grant of the applications will also implicate the broadcast radio multiple ownership rule, 47 C.F.R. §73.3555(a), in the Seattle-Tacoma, WA area. Clear Channel currently controls KMNT(FM), Centralia, WA, and is acquiring KJR(AM), KBTB(FM), and KUBE(FM), Seattle, WA; and KHHO(AM), Tacoma, WA. In its Technical Statement, Clear Channel sufficiently demonstrates that two combinations will be created, both of which will comply with the broadcast radio multiple ownership rule. *See* 47 C.F.R. §73.3555(a)(1).

II. BACKGROUND

3. Clear Channel is a publicly traded corporation with the majority of its shares held by the investing public, and has attributable interests in approximately 1200 full-service radio broadcast licenses,⁶ as well as 22 full-service television broadcast licenses. Pursuant to an Agreement and Plan of Merger dated October 5, 2001, Ackerley will merge with CCMM Sub, Inc., a new wholly owned subsidiary of Clear Channel. The surviving corporation will retain the Ackerley name, while the directors of the merger subsidiary will replace the current directors of Ackerley. The parties will exchange 100% of the outstanding voting and non-voting securities of Ackerley for shares of Clear Channel common stock. Clear Channel will pay Ackerley .35 Clear Channel shares in exchange for each Ackerley share, for a total merger consideration of approximately \$483 million. Clear Channel will also assume \$294 million in Ackerley debt, bringing the total value of the transaction to approximately \$775 million.

III. RADIO/TELEVISION CROSS-OWNERSHIP RULE

4. **The Standard.** The radio/television cross-ownership rule is implicated when the Grade A contour of a television station encompasses the entire community of license of a commonly owned AM or FM radio station, or when the 2 mV/m contour of an AM radio station, or the 1 mV/m contour of an FM radio station, encompasses the entire community of license of a commonly owned television station.⁷ Under the numerical ownership/voice count restrictions of the radio/television cross-ownership rule, a party may own 1 television station and up to 6 radio stations in any market where at least 20 independently owned media voices remain in the market after the proposed transaction.⁸ If, under the Commission's local television ownership rule, a single entity could own 2 television stations in the market, it may hold either 2 television and 6 radio stations or 1 television and 7 radio stations in that market.⁹ Under our local television multiple ownership rule, a party may own, operate or control 2 television stations within the same Nielsen Designated Market Area (DMA) if the Grade B contours of the stations do not overlap, or eight or more independently owned and operating commercial and noncommercial television stations will be licensed to the DMA and at least one of the stations is not ranked within the top four stations in the DMA in terms of audience share.¹⁰ Second, a party may own 1 television station and up to 4 radio stations in any market where at least 10 independently owned media voices remain in the market after the proposed transaction.¹¹ If, under the Commission's local television ownership rule, a single entity could own 2 television stations in the market, it may also hold 2 television stations and 4 radio stations in that market. Third, a party may own 1 television station and 1 radio station regardless of the number of independent voices remaining in the market.¹² If, under the Commission's local television ownership rule, a single entity could own 2 television stations in the market, it may also hold 2 television stations and 1 radio station in that market.

5. As set forth in the *Television Ownership Order*, where a resulting combination contains

⁶ Clear Channel also has an approximately 26% non-voting equity interest in Hispanic Broadcasting Corporation (HBC), which is convertible to a voting interest only upon prior FCC consent. The Commission has previously determined that this interest is not attributable. See *Shareholders of AMFM, Inc.*, 15 FCC Rcd 16062, 16078 (2000). No facts or circumstances exist which would call for a review of this ownership relationship within the context of the instant applications.

⁷ 47 C.F.R. §73.3555(c)(i) and (ii).

⁸ 47 C.F.R. §73.3555(c)(2)(i)(A).

⁹ 47 C.F.R. §73.3555(c)(2)(i)(B).

¹⁰ 47 C.F.R. §73.3555(b).

¹¹ 47 C.F.R. §73.3555(c)(2)(ii).

¹² 47 C.F.R. §73.3555(c)(2).

stations in more than one Arbitron radio metro market, the voice count prong of the radio/television cross-ownership rule must be satisfied in each market.¹³ Included as “voices” are those radio stations located outside a radio metro market, but with a “reportable share” in the market.¹⁴ The Commission noted that “[w]here there is no recognized Arbitron radio metro market, parties may use data associated with a ‘functionally equivalent’ radio market,” and that parties may demonstrate that a geographic area constitutes a “functionally equivalent” market based on “the listening statistics of the populace in the counties that make up that geographical area” or the relevant signal contour overlaps of geographically proximate stations.¹⁵ In the *Television Ownership Reconsideration*, the Commission stated that “[w]e generally do not count radio stations located in one Arbitron radio market towards the limits on the number of radio stations a party may own in another Arbitron radio market, even when the radio stations in the different markets fall within the Grade A contour of a commonly owned TV station.”¹⁶ However, the Commission will count radio stations in different Arbitron markets towards the limits that an entity may own if the radio station’s relevant contour triggers the rule. As the Commission stated, “[g]iven that contour encompassment continues to trigger the radio/TV cross-ownership rule, we believe it is necessary to recognize that radio stations located in one market in fact have a presence in a distant market, if their contours reach into the distant market and trigger the rule.”¹⁷

6. **The Clear Channel Combinations.** Clear Channel has attached exhibits concluding that its proposed radio/television combinations will comply with the numerical ownership/voice count restrictions of the radio/television cross-ownership rule in Bakersfield, CA (1 tv and 6 radios); Fairbanks, AK (1 tv and 4 radios); Fresno, CA (1 tv and 6 radios); Monterey-Salinas, CA (1 tv and 6 radios); and Santa Rosa, CA (1 tv and 4 radios).¹⁸ With respect to the Eugene, OR market, Clear Channel states that the Grade A contour of KMTR(TV), Eugene, OR will encompass the communities of license of commonly owned radio stations in the Eugene-Springfield, OR radio metro market (1 tv and 6 radios) as well as 5 radio stations in the separate, “functionally equivalent” Albany-Corvallis, OR market (1 tv and 5 radios).¹⁹ In constructing the “functionally equivalent” Albany-Corvallis market, Clear Channel states that it has counted those “geographically proximate radio stations with a principal community contour that overlaps or intersects with the principal community contours of its owned stations,” and those stations with a “reportable share in the area according to an Arbitron custom survey.”²⁰ Although this is

¹³ *Review of the Commission’s Regulations Governing Television Broadcasting (“Television Ownership Order”)*, 14 FCC Rcd 12903, 12952 n.173 (1999).

¹⁴ *Id.* at 12951.

¹⁵ *Id.* at 12951 n.170. *See, also*, 47 C.F.R. §73.3555(c)(3)(ii)(C).

¹⁶ *Review of the Commission’s Regulations Governing Television Broadcasting, Memorandum Opinion and Second Order on Reconsideration (“Television Ownership Reconsideration”)*, 16 FCC Rcd 1067, 1081 (2000).

¹⁷ *Id.*

¹⁸ Specifically, Clear Channel will control the following television and radio station combinations: **Bakersfield, CA** – KGET(TV), KDFO(AM), KZTK(AM) and KKXF-FM, Bakersfield, CA; KDFO-FM and KKDJ(FM), Delano, CA; and KRAB(FM), Greenacres, CA: **Fairbanks, AK** – KTVF(TV), KAKQ-FM, KIAK(AM), KIAK-FM and KKED(FM), Fairbanks, AK: **Fresno, CA** – KGPE(TV), KALZ(FM, and KCBL(AM), Fresno, CA; KRDU(AM) and KSOF(FM), Dinuba, CA; KEZL(FM), Fowler, CA; and KRZR(FM), Hanford, CA: **Monterey-Salinas, CA** – KION(TV), KDON-FM, KTOM(AM), KTOM-FM and KTXS(AM), Salinas, CA; KMJO(FM), Marina, CA; and KOCN(FM), Pacific Grove, CA: **Santa Rosa, CA** – KFTY(TV), Santa Rosa, Ca; KABL(AM) and KNEW(AM), Oakland, CA; KSTE(AM), Sacramento, CA; and KISQ-FM, San Francisco, CA.

¹⁹ Consequently, Clear Channel states that it will control the following combinations in the Eugene market: **Eugene-Springfield, OR** – KMTR(TV), KPNW(AM), and KODZ(FM), Eugene, OR; KFLY(FM) and KLOO-FM, Corvallis, OR; KDUK-FM, Florence, OR; and KRKT-FM, Albany, OR: **Albany-Corvallis, OR** – KMTR(TV), Eugene, OR; KEJO(AM), KFLY(FM), KLOO(AM), and KLOO(FM), Corvallis, OR; and KRKT-FM, Albany, OR.

²⁰ Radio/Television Cross-Ownership Showing, page 5 n.6.

the first instance in which an applicant has constructed a “functionally equivalent” market in order to demonstrate compliance with the numerical ownership restrictions of the radio/television cross-ownership rule, Clear Channel’s showing appears founded on credible data from industry-recognized sources, and is consistent with the Commission’s determination to permit an applicant to demonstrate a “functionally equivalent” market where there exists no accepted Arbitron radio metro market.²¹ We, therefore, agree that, based upon Clear Channel’s showing, two combinations will be created in the Eugene, OR market, one in the Eugene-Springfield radio metro market and a second in the “functionally equivalent” Albany-Corvallis market.²² Based upon our review of Clear Channel’s showings, we agree that the combinations in these six markets will comply with the radio/television cross-ownership rule.

7. Clear Channel acknowledges that the resulting combinations in the remaining five markets will exceed the numerical ownership/voice count restrictions of the radio/television cross-ownership rule. In the Rochester, Santa Maria, and Syracuse markets, Clear Channel has filed showings concluding that new 1 tv/7 radio station combinations will result from grant of the applications.²³ Based on its showing, Clear Channel states that, while enough independent media voices will remain in each market to permit a 1 tv/7 radio station combination, fewer than 8 independently owned and operating commercial and non-commercial television voices will remain in the respective DMAs post-merger. Consequently, Clear Channel states that it will only be able to hold a 1 tv/6 radio station combination in each of these markets since common ownership of two television stations in the respective DMAs will not be consistent with the revised duopoly rule.²⁴ Clear Channel must, therefore, sell either 1 radio station or 1 television station in each of these 3 markets to come into compliance with the radio/television cross-ownership rule. In Binghamton, NY, Clear Channel has filed an exhibit in which it concludes that a single new 1 tv/6 radio combination will result from the merger.²⁵ Clear Channel states that only enough independent media “voices” will remain in the relevant market post merger to permit a 1 tv/4 radio station combination. Clear Channel must, therefore, sell 2 radio stations or 1 television station in the Binghamton market to come into compliance with the radio/television cross-ownership rule.

8. In Utica, NY, Clear Channel states that it will control a 1 tv/10 radio station combination,²⁶ which will include its radio station in the Utica-Rome Arbitron radio metro market, as well as one radio station in the Syracuse radio metro market whose 2mV/m contour encompasses Utica. Clear Channel has submitted a showing in which it concludes that enough independent media voices will

²¹ See ¶6, *supra*.

²² Of the 5 radio stations within the “functionally equivalent” Albany-Corvallis market, 3 will also encompass Eugene, OR, the community of license of KMTR(TV), and are, therefore, included in the Eugene-Springfield combination. Neither of the 2 remaining Albany-Corvallis stations excluded from the Eugene-Springfield combination have reportable shares in the Eugene-Springfield radio metro market.

²³ Specifically, Clear Channel will control the following 1 tv/7 radio station combinations: **Rochester, NY** - WOKR(TV), WHAM(AM), WHTK(AM) and WVOR-FM, Rochester, NY; WISY(FM), Canandaigua, NY; WKGS(FM), Irondequoit, NY; WLCL(FM), Honeoye Falls, NY; and WNVE(FM), S. Bristol Township, NY; **Santa Maria, CA** - KCOY-TV, KSMA(AM), KSNI-FM, and KXFM(FM), Santa Maria, CA; KSMY(FM), Lompoc, CA; KSLY-FM, San Luis Obispo, CA; KSTT-FM, Los Osos, CA; and KURQ(FM), Grover Beach, CA; **Syracuse, NY** - WIXT(TV), WHEN(AM), WSYR(AM), WWHT(FM), WYYY(FM), Syracuse, NY; WBBS(TV), Fulton, NY; WPHR(FM), Auburn, NY; and WXBB(FM), DeRuyter, NY.

²⁴ See ¶5, *supra*.

²⁵ Clear Channel will control the following combination in the Binghamton, NY market: WIVT(TV) and WINR(AM), Binghamton, NY; WENE(AM) and WMRV-FM, Endicott, NY; WBBI(FM), Endwell, NY; WKGB-FM, Conklin, NY; and WMXW(FM), Vestal, NY.

²⁶ Clear Channel will control the following combination in the Utica, NY market: WUTR(TV), WOUR(FM) and WUTQ(AM), Utica, NY; WADR(AM) and WRFM(FM), Remsen, NY; WLFH(AM) and WSKU(FM), Little Falls, NY; WRBY(FM) and WRNY(AM), Rome, NY; WSKS(FM), Whitesboro, NY; and WSYR(AM), Syracuse, NY.

remain to permit a 1 tv/6 radio station combination in the Utica market. Based on this showing, Clear Channel will need to sell 4 radio stations or 1 television station to come into compliance in the Utica market.²⁷ Douglas Elznic, however, argues that Clear Channel's showing was insufficient since the radio contour map for the Utica market fails to include Clear Channel radio station WXBB(FM), DeRuyter, NY, which is assigned to the adjacent Syracuse radio metro market. With WXBB(FM) included, Clear Channel would hold a 1 tv/11 radio station combination in the Utica market. Elznic also argues that Clear Channel has included several out-of-market stations in the voice count that have extremely low audience shares in the Utica market. Elznic argues that precedent exists for finding that the audience shares are too low for these out-of-market stations to be considered as "voices" in the Utica market.²⁸ With these several out-of-market stations excluded, Elznic argues that a sufficient number of independent "voices" in the market exist to permit only a 1 tv/4 radio station combination. Elznic argues, therefore, that Clear Channel would need to divest 7 radio stations to come into compliance in the Utica market.²⁹

9. Clear Channel has submitted an amended engineering exhibit demonstrating that WXBB(FM) does not implicate the radio/television cross-ownership rule in the Utica market. With respect to the voice count, the Commission stated in the *Television Ownership Order* that "it is important to count radio stations with a reportable share in the relevant market because those stations clearly serve as a source of information and entertainment programming for the market."³⁰ Therefore, consistent with the *Television Ownership Order*, all stations with a reportable audience share in the market are considered "voices" in determining compliance with the radio/television cross-ownership rule. The precedent cited by Elznic, a February 17, 2000 staff letter, is inapplicable here since it concerned our local radio market concentration analysis and, in particular, whether an out-of-market station should be considered part of a radio cluster when it has a reportable audience share, but no revenue share, within the local market.³¹ Because under our local radio market concentration analysis the Commission examines advertising revenue share and not audience share, the staff properly concluded that an out-of-market station could not be included in a radio cluster on the basis of audience share alone.³² We, therefore, find that Clear Channel will control a 1 tv/10 radio station combination in the Utica market, and that enough independent voices will exist to permit a 1 tv/6 radio station combination.

10. **Waiver Request.** Clear Channel has requested 12 months to come into compliance in all 5 markets where grant of the instant applications will result in a violation of the radio/television cross-ownership rule. As support, Clear Channel notes that the Commission has in the past granted temporary waivers in order to provide a reasonable time for the station divestitures necessary to come into compliance with Commission rules. Clear Channel concedes that in most recent cases, the Commission has found six months to be a reasonable period to divest the necessary stations. Clear Channel, however, argues that those waivers were granted in a different economic climate, and that the current economic climate justifies a 12-month temporary waiver.

11. In support of its contention that a 12-month waiver is justified, Clear Channel has submitted the declaration of Mark. R. Fratrick, Ph.D., Vice President of BIA Financial Network. Fratrick

²⁷ Common ownership of the 10 radio stations will not violate the broadcast radio multiple ownership rule because not all 10 stations are in the same market as defined by our rules. 47 C.F.R. §73.3555(a)(1).

²⁸ See Letter to Robert C. Fisher, Esq., from Linda Blair, Chief, Audio Services Division (February 17, 2000).

²⁹ Though not mentioned in Elznic's informal objection, we note that Clear Channel could also come into compliance with the radio/television cross-ownership rule by selling 1 television station.

³⁰ *Television Ownership Order*, 14 FCC Rcd at 12951.

³¹ See Letter to Robert C. Fisher, Esq., at page 3.

³² See *KLXX, Inc.*, 13 FCC Rcd 15685, 15687 (1998); *Shareholders of Jacor Communications, Inc.*, 14 FCC Rcd 6867 (1999).

states that what had been strong growth in radio and industry revenues through the first three quarters of 2000 began to slow by the year's end, along with a general slowdown in the economy. In particular, he states that radio industry advertising revenue declined by 7% during the first eight months of this year. He sees little prospect for a rebound in broadcast advertising revenue given the projected increase in the unemployment rate and concomitant decline in consumer spending.³³ Because of this economic downturn, Fratrik concludes that lenders have been less willing to finance television station purchases. In addition, Fratrik contends that the low growth in broadcast industry revenue was accompanied by slow acceptance of digital television receivers, the result of concerns over the potential costs associated with the digital transition. Consequently, the number and value of radio and television station sales has declined, according to Fratrik. Fratrik notes that the number of radio station sales during the first three quarters of this year have declined 20% from the corresponding period last year, and that the total value of radio station sales during the first three quarters of this year is only 18.9% of the total value during the corresponding period last year. With respect to the broadcast television industry, Fratrik notes that during the last two years, "the number of stations sold hovered around the 150-station level" but that "[s]o far the 56 stations sold this year only corresponds to less than 40% of that level."³⁴ Moreover, Fratrik states that "[t]he decrease in value is even more pronounced as the total value [of television station sales] for the first three-quarters of 2001 only represents about one-fifth the value of all of last year, with most of last year's revenue originating in the first three quarters."³⁵ According to Fratrik, it is unlikely that the broadcast television industry will witness strong revenue growth within the next 6 to 12 months. Potential buyers will need to see a sustained recovery, asserts Fratrik, before they will be willing to assume the risk of a television station purchase, especially in mid-sized and smaller markets facing the transition to digital television.

12. In its comments supporting the applications, MMTC argues that spin-offs from large mergers often provide the best opportunities for minorities and new entrants to acquire quality broadcast properties. MMTC contends, for instance, that the Viacom/CBS merger resulted in the acquisition of 5 large market broadcast properties by minorities, and that the Clear Channel/AMFM merger resulted in the acquisition of 40 radio properties by 9 minority-owned enterprises. MMTC asserts that additional broadcast properties can be acquired as a result of the merger between Ackerley and Clear Channel if there is sufficient time to assemble the necessary financing. Citing Dr. Fratrik, MMTC states that current economic conditions have led banks to become less willing to make risky loans, the very kind of loans new entrants rely upon for station purchases. MMTC states that it has developed relationships with numerous companies that could benefit from any station divestitures, but that 6 months is an insufficient length of time to assemble the necessary financing.

13. Elznic challenges Clear Channel's showing. He notes that Clear Channel appears to have contracted with BIA for Dr. Fratrik's statement, and that the statement was procedurally deficient for several reasons.³⁶ With respect to the economic analysis, he argues that the statement is "heavily opinionated" and reaches "sweeping conclusions." He asserts that no extensive research has been conducted linking the reduction in station sales to conditions in the economy. Elznic notes that other reasons may explain the decline in station sales, including industry consolidation following passage of the 1996 Telecom Act. Elznic states that, in any case, the figures provided by Dr. Fratrik for 2000 and 2001 do not show a dramatic decrease in the number of station sales. He contends that the Commission should perform its own extensive research of the industry before granting a 12-month waiver in this case. He

³³ He contends that the events of September 11 have also dampened investment in the short term.

³⁴ Fratrik Declaration, page 6.

³⁵ *Id.*

³⁶ He states that Dr. Fratrik failed to sign the statement or submit it himself, and that the certification was insufficient.

claims that Clear Channel is requesting a 12-month waiver simply to drive up the sales price of its undesirable stations.

14. **Discussion.** As noted by Clear Channel, several of our past decisions did conclude that temporary waivers of our multiple or cross-ownership rules were appropriate to facilitate multi-station transactions, especially when the waiver was incidental to the larger transaction.³⁷ The current transaction, involving 20 full-service television and radio licenses, is similar in size and complexity to the most recent transactions where we granted temporary waivers of our multiple or cross-ownership rules. As always, in evaluating the propriety and nature of such waivers, we assess the need for the waiver and the harm to the goals underlying the rule.

15. After a careful review of the record, we conclude that allowing Clear Channel a limited period of time following consummation of the transaction to come into compliance with the radio/television cross-ownership rule in the Binghamton, Rochester, Santa Maria, Syracuse and Utica markets is in the public interest. The stations to be commonly owned represent a relatively small portion of this larger transaction. Moreover, we believe that immediate divestiture would hamper the search for buyers and thereby create the risk of a “fire sale.” It has long been Commission policy to avoid any forced sale of assets that could unnecessarily restrict the value of stations to be divested and could artificially limit the range of potential buyers.³⁸

16. Moreover, we do not believe that a temporary waiver would unduly harm competition and diversity in the 5 affected markets during the short period of common ownership. In the Rochester, Santa Maria, and Syracuse markets, where Clear Channel will temporarily control 1 tv/7 radio station combinations, 32, 24 and 26 independent media voices, respectively, will remain post-merger, a level of voice diversity consistent with that in previous temporary waivers of our radio/television cross-ownership and local television multiple ownership rule.³⁹ In the Utica market, where Clear Channel will temporarily control a 1 tv/10 radio station combination, 22 independent media voices will remain post-merger, which is also a level of voice diversity consistent with previous temporary waivers. Finally, in Binghamton, Clear Channel will control a 1 tv/6 radio station combination, and 18 independent media voices will remain post-merger. Although this level of concentration is higher than we have permitted in prior cases, we do not believe it is likely to produce undue adverse effects on diversity or competition given the temporary nature of the combination and level of independent service remaining in the community. In this latter respect, we note that, were two additional voices present in Binghamton, no divestitures would be required. Given these facts, we do not believe that providing a temporary period to divest in these 5 markets will unduly harm diversity or hinder competition in a manner inconsistent with the public interest.

17. We conclude that, in this instance, a 12-month temporary waiver of the radio/television cross-ownership rule would provide a reasonable time for a broad range of qualified buyers to take advantage of the opportunity to own a broadcast station as a result of this multi-station transaction. MMTC states that after the Clear Channel/AMFM merger it assisted in bringing “over three dozen” companies into contact with “lenders and investment houses.”⁴⁰ MMTC further states that “the

³⁷ See, e.g., *In Re UTV of San Francisco, Inc.*, 16 FCC Rcd 14975 (2001)(6-month temporary waiver of television duopoly rule granted in transfer of 10 full-service television licenses); *LINT Co.*, 15 FCC Rcd 18130 (2000)(6-month temporary waiver of duopoly rule granted in assignment and transfer of 13 full-service television stations); *Shareholders of CBS Corporation*, 15 FCC Rcd 8230 (2000)(6-month temporary waiver of radio/television cross-ownership rule granted in transfer of 17 full-service television stations, and 161 full-service radio stations).

³⁸ *Multimedia, Inc.*, 11 FCC Rcd 4883, 4885 (1995).

³⁹ See, e.g., *In Re UTV of San Francisco, Inc.*, 16 FCC Rcd 14984; *Lint Co.*, 15 FCC Rcd at 18133; and *Shareholders of CBS Corporation*, 15 FCC Rcd at 8243.

⁴⁰ Comments of MMTC, page 3.

relationships born of these contacts survive today, and could result in additional acquisitions if stations are available to buy and if there is sufficient time...to assemble the financing.”⁴¹ All 5 markets are relatively small, making the divestiture stations less attractive purchases. Citing Dr. Fratrik, MMTC notes that banks will now only lend 5 times a station’s cash flows to finance a purchase, whereas previously loans were often for six times a station’s cash flows.⁴² Given the nature of the local markets and the difficult financial environment, it is reasonable to assume that finding potential buyers and assembling the necessary financing has become more difficult. In light of our concern that any shorter period may limit the number of prospective buyers, we find that a 12-month temporary waiver of our radio/television cross-ownership rule is in the public interest.

IV. SYRACUSE AND MONTEREY-SALINAS MARKETS

18. **Background and Standard.** The petitioners have raised arguments relating to the Syracuse and Monterey-Salinas markets where they believe grant of the applications would be anti-competitive, contrary to Commission rules, or otherwise not in the public interest. The arguments are similar to other pleadings filed in previous proceedings or applications involving these two markets.⁴³ Parties challenging an application to transfer control must set forth “specific allegations of fact sufficient to show that...a grant of the application would be *prima facie* inconsistent with [the public interest].”⁴⁴ The Commission must designate an application for hearing where the “totality of evidence” raises a “substantial and material question of fact” concerning whether grant of the application would serve the public interest.⁴⁵

19. **Syracuse Market.** Elznic contends that Clear Channel holds an unfair competitive advantage in the Syracuse radio market since its stations have the best signal coverage and technical facilities. He also states that the combination of a television station with the existing radio cluster “will allow Clear Channel to create custom-package, multimedia advertising campaigns to help increase its overall radio revenue figures.”⁴⁶ He, therefore, requests that the Commission require Clear Channel to divest one of its technically and economically competitive radio stations in order to “‘even out’ the playing field in the radio market.”⁴⁷ He notes that the Commission is currently reviewing certain policies and rules as a result of the *Local Radio Ownership NPRM*, including the Commission’s current treatment of local broadcast radio and television advertising as separate product markets.⁴⁸ Consequently, he further requests that the Commission defer consideration of the instant application until all comments and reply comments have been received in the local radio ownership proceeding.

20. Clear Channel responds that compliance with the radio/television cross-ownership rule is based solely on the number of voices remaining in the market. According to Clear Channel, Elznic’s

⁴¹ *Id.*

⁴² *Id.* at page 1.

⁴³ See, e.g., February 7, 2000 Letter to Robert C. Fisher, Esq; Letter to Steven J. Stone, Esq. et al., from Barbara A. Kreisman, Chief, Video Services Division (January 5, 2000) (Consenting to the assignment of license of KION(TV), Monterey, CA, from Harron Television of Monterey to AK Media Group, Inc.).

⁴⁴ 47 U.S.C. §309(d)(1). Informal objections must also contain adequate and specific allegations sufficient to warrant the relief requested. *Turner Broadcast System, Inc.* 11 FCC Rcd 19595, 19609 (1996).

⁴⁵ 47 U.S.C. §309(d)(1) and (2). See, also, *Astroline Communications Co. v. FCC*, 857 F.2d 1556, 1562 (D.C. Cir. 1988); *Serafyn v. FCC*, 149 F.3d 1213, 1216 (D.C. Cir. 1998).

⁴⁶ Informal Comments to Deny, page 7.

⁴⁷ *Id.*

⁴⁸ See *Notice of Proposed Rulemaking, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets (Local Radio Ownership NPRM)*, 16 FCC Rcd 19861 (2001).

arguments should have been raised during the rulemaking revising the local broadcast television multiple ownership rule. Clear Channel further responds that the instant transaction involves only the acquisition of a television station and, therefore, the pending local radio ownership proceeding has no bearing on grant of the instant application.

21. Since November 19, 1999, the Commission has applied the numerical ownership/voice count restrictions of the radio/television cross-ownership rule to radio/television combinations.⁴⁹ The Commission has not otherwise examined the competitive impact of an acquisition on the advertising market for radio and television, in part because it has believed that radio advertising and television advertising constitute separate product markets. However, in our local radio ownership proceeding we are currently seeking comment on whether this belief is correct.⁵⁰

22. We nonetheless deny Elznic's request that we defer considering these applications until all comments have been received in the Local Radio Ownership NPRM. Rather, consistent with our procedure with regard to radio station applications, until the local radio ownership proceeding is completed, we will presume that radio advertising and television advertising constitute separate product markets, although we will consider the particular facts of each case. Here, we find no evidence in the record that raises a substantial and material issue that radio and television advertising do not constitute separate markets in the Syracuse area. Accordingly, on this record, we will analyze Clear Channel's radio/television combination only pursuant to the numerical ownership/voice count limitations of the radio/television cross-ownership rule. As noted above, Clear Channel will control a 1 tv/7 radio station combination in violation of the radio/television cross-ownership rule, and it must divest either 1 television or 1 radio station to achieve compliance. We will not specify which station or stations Clear Channel must divest, as we do not consider the technical capabilities of commonly owned stations in determining compliance with the numerical ownership restrictions of the radio/television cross-ownership rule.⁵¹

23. **Monterey-Salinas Market.** Congressman Sam Farr requests that the Commission designate the KION(TV), Monterey, CA transfer application for hearing, arguing that Clear Channel's assumption of a Time Brokerage Agreement (TBA) between AK Media Group, Inc. (AK Media), a wholly owned subsidiary of Ackerley, and Seal Rock Broadcasters, LLC (Seal Rock), the licensee of KCBA(TV), Salinas, CA (a Fox affiliate) will result in a "*de facto* television duopoly" in the Monterey-Salinas market that will violate the local television multiple ownership rule.⁵² He claims that the TBA is not consistent with Commission policy because the commonly owned stations are collocated, as well as share the same General Manager, National Sales Manager, Production Manager, News Director, post office box, fax number, and advertising rep firm. Congressman Farr also states that the Station Manager of KCBA(TV) is the Business Manager of KION(TV). He contends that the relationship between AK Media and Seal Rock "does not square with the FCC staff's finding [in a January 5, 2000 staff letter] that the stations maintained separate personnel and facilities within the Salinas building under the previous LMA."⁵³ He further claims that the TBA has not served Monterey residents well since it has caused the

⁴⁹ See *Television Ownership Order*, 14 FCC Rcd 12903; 47 C.F.R. § 73.3555(c).

⁵⁰ See *Local Radio Ownership NPRM*, 16 FCC Rcd 19861

⁵¹ For the above reasons, we find that the December 7, 2001 comments of Alex Sheina also fail to raise a substantial and material question of fact that grant of the WOKR(TV) application would not be in the public interest. Consistent with our precedent, we will not specify which stations Clear Channel must divest to come into compliance with our rules.

⁵² Common ownership of KION(TV) and KCBA(TV) would violate the television duopoly rule since only four independently owned and operating stations would remain in the Monterey-Salinas DMA post-merger. 47 C.F.R. §73.3555(b).

⁵³ Comments of Congressman Farr, at page 2.

removal of the only English-language station operating from the Monterey peninsula, and has violated an alleged commitment to maintain at least 4.5 hours of daily local news broadcasts.

24. Both Congressman Farr and Buckley also raise competition concerns similar to those raised within the context of the Syracuse market. Congressman Farr is concerned that Clear Channel will be able to leverage its local outdoor advertising business, syndicated radio programming business, and concert promotion business to increase its dominance in radio and television advertising sales in the Monterey-Salinas market. He states that Clear Channel has taken advantage of a number of ownership and attribution “loopholes” in order to create a “powerful multimedia combination” and, therefore, grant of the application would not serve the public interest. He cites the pending radio ownership proceeding, and argues that the Commission should delay approval until the Commission determines the extent to which the local markets for radio and television advertising sales overlap.⁵⁴ Buckley raises similar arguments and claims that the grant of the KION(TV) application will violate the spirit and goal of the radio/television cross-ownership rule by failing to protect competition for advertising sales, contending that the radio/television cross-ownership rule as adopted was not intended for a market the size of Monterey-Salinas.

25. Ackerley, in the consolidated opposition, argues that the TBA is non-attributable, since it provides for a maximum of 15% of the weekly programming for KCBA(TV).⁵⁵ Ackerley notes that Commission staff already reached this conclusion in the January 5, 2000 letter consenting to the assignment of the KION(TV) license to AK Media, and further responds that the TBA is fully consistent with Commission rules since the licensee retains control over basic policies concerning programming, finances, and personnel. Ackerley states that the licensee employs and pays at least three employees at KCBA(TV), one of which is a manager. With respect to common personnel, Ackerley states that KION(TV) and KCBA(TV) do not share either a General Manager or a National Sales Manager, and that the Station Manager of KCBA(TV) and the Business Manager of KION(TV) are not the same person. Ackerley acknowledges that the stations do share a Production Manager, News Director, post office box, fax number, and advertising representative firm, but that the Commission noted that such cooperative arrangements result in operational benefits when it decided to permit LMAs. Any programming changes, Ackerley asserts, were the result of changes in the local and national economy, and did not violate any commitment made to the Commission.

26. With respect to competition in the Monterey-Salinas market, both Ackerley in the consolidated opposition and Clear Channel in its separate opposition argue that grant of the KION(TV) application will be consistent with the numerical ownership/voice count restrictions of the local television multiple ownership rule. Ackerley, in its consolidated opposition, argues that Buckley has provided no factual evidence to support its contention that grant of the KION(TV) application will subvert competition. With respect to Congressman Farr’s concerns regarding the advertising market in Monterey-Salinas, Clear Channel reiterates that compliance with the radio/television cross-ownership rule is premised solely upon the number of independent voices remaining in the relevant market. According to Clear Channel, its other non-broadcast interests, as well as the technical capacities of its radio stations, are

⁵⁴ Congressman Farr also states that he is “aware of increasing allegations that large media companies such as these are utilizing supposedly independent operators to ‘warehouse’ stations they cannot own under the Commission’s ownership limits.” Comments of Congressman Farr, at page 3. Because Congressman Farr does not submit any specific information in support of this contention, we will not consider this general allegation further within the context of this individual transaction.

⁵⁵ In the *Attribution Order*, the Commission decided to “attribute television LMAs, or time brokerage of another television station in the same market, for more than 15 percent of the brokered station’s broadcast hours per week and to count such LMAs toward the brokering licensee’s local ownership limits.” *Review of the Commission’s Regulations Governing Attribution of Broadcast and Cable/MDS Interests (“Attribution Order”)*, 14 FCC Rcd 12559, 12597 (1999).

irrelevant to determining compliance with the radio/television cross-ownership rule. As with the Syracuse market, Clear Channel argues that the proposed transaction involves only the acquisition of a television station and, therefore, the pending local radio ownership proceeding has no bearing on grant of the instant KION(TV) application.

27. Buckley, in its reply to the oppositions of Clear Channel and Ackerley, states that Clear Channel's ownership combination appears to be in compliance with the broadcast television multiple ownership and radio/television cross-ownership rule, but that the Commission must nevertheless fully examine the operation of the KCBA(TV) TBA to determine the competitive impact on the Monterey-Salinas market.⁵⁶ Buckley argues that Congressman Farr has raised questions concerning whether KION(TV) and KCBA(TV) are really independent operators in light of the shared personnel and the fact that the 85% of programming not provided by the broker is nationally syndicated. Buckley also states that AK Media has entered into a related joint sales arrangement (JSA) with the licensee of KCBA(TV) in combination with the TBA, and that this arrangement should be investigated in order to determine its compliance with Commission's policies and the public interest. As set forth in Section 6 of the TBA, the JSA contemplates that AK Media will retain all advertising and other revenues related to the programming provided under the TBA as well as all revenue from programming provided by Seal Rock, with the exception of network compensation revenues. Buckley acknowledges that Commission staff did find in the January 5, 2000 letter that the KCBA(TV) TBA would not be attributable to Ackerley, but that this finding is incomplete since the staff did not review the effect Clear Channel's ownership of the stations would have on concentration in the market for television and radio advertising.

28. **Discussion.** On March 28, 2002, the staff released a letter requesting further information regarding the process by which programming decisions are made under the KCBA(TV) TBA and related business arrangements outside that agreement.⁵⁷ In particular, the staff sought information concerning the role of Ackerley and Seal Rock in initially acquiring programs (syndicated or otherwise), as well as the role of the Seal Rock and Ackerley employees in such programming decisions. Ackerley filed a response on April 3, 2002, to which it attached the declarations of George Kriste, 50% owner of the parent of Seal Rock and General Manager of KCBA(TV), and Mark Faylor, Senior Vice President of AK Media, as well as a copy of the January 12, 2000 TBA between AK Media and Seal Rock. Buckley filed its reply on April 10, 2002.

29. Ackerley states that apart from the programming provided under the TBA, KCBA(TV)'s programming consists of Fox programming, syndicated programming and paid programming.⁵⁸ Ackerley argues that the programming of station KCBA(TV) has been conducted in full compliance with the TBA and in compliance with Commission rules and policies. Kriste declares that much of the programming not provided by Ackerley under the TBA was in place at the time Seal Rock acquired KCBA(TV), and that he made the transfer of the Fox affiliation agreement a condition upon the purchase. He further declares that syndicated programming acquired since that time has been obtained with the assistance of Ackerley personnel and resources, but that the broadcast of such programming is subject to his specific approval, and that he is the only Seal Rock employee involved in the approval of programming. He declares that he is actively involved in the affairs of KCBA(TV), spending approximately 7 to 10 hours per month at the station while being in regular telephone contact with the station at other times. Faylor declares that Ackerley suggests programming to Seal Rock during the hours not covered by the TBA, but

⁵⁶ Buckley did not address the KCBA(TV) TBA in its original petition to deny. However, because Ackerley filed a consolidated opposition addressing both Buckley's and Congressman Farr's arguments, we believe it is appropriate to consider Buckley's arguments regarding the KCBA(TV) TBA.

⁵⁷ See Letter to James Winston, Esq. and Christopher Robbins, Esq., from Barbara A. Kreisman, Chief, Video Division (March 28, 2002).

⁵⁸ See Letter to Barbara A. Kreisman, Chief, Video Division, from James Winston, Esq. (April 3, 2002).

that Seal Rock is free to reject such suggestions. He further declares that Ackerley's assistance is mutually beneficial since Seal Rock is able to acquire programming on better terms than would otherwise be available without the TBA and related business arrangements. Buckley, in its reply, argues that Ackerley's response reveals that it actually provides more than 15% of KCBA(TV)'s weekly programming and, thus, the TBA should be attributable. Buckley asserts that Kriste never reveals who makes the programming decisions before Ackerley secures the programming in the first place.⁵⁹ Buckley states that, while Seal Rock is apparently free to obtain programming from any source, it appears not to have done so.⁶⁰

30. On January 5, 2000, the staff issued a letter consenting to the assignment of KION(TV) from Harron Television of Monterey (Harron) to AK Media. AK Media owned KCBA(TV) prior to the acquisition of KION(TV) and, pursuant to an April 24, 1996 LMA arrangement, brokered "all non-CBS programming aired" on KION(TV) "up to an including 24 hours of programming per day, seven days per week."⁶¹ In the January 5, 2000 letter, the staff correctly concluded that the Commission had permitted the particular relationships between AK Media and Harron and, therefore, the various petitioners failed to demonstrate that the LMA arrangement raised a substantial and material question of fact concerning either an unauthorized transfer of control or other violation of Commission rules, including the broadcast television multiple ownership rule.⁶² In particular, the staff noted that, at the time the parties entered into the KION(TV) LMA arrangement, the Commission permitted brokers to enter into an LMA and an Option/Right of First Refusal Agreement with a licensee while at the same time acting as a guarantor for a loan to the licensee, as well as permitted a broker to collect a station's advertising revenue.⁶³ The staff also correctly noted that the licensee's retention of two employees, one of whom was management, complies with the minimum staffing requirements of the main studio rule. Ackerley subsequently acquired the KION(TV) license, but because both KION(TV) and KCBA(TV) are located in the same Monterey-Salinas DMA, which has fewer than 8 independently owned and operating television "voices," AK Media sold its interest in KCBA(TV) and entered into a new TBA arrangement on January 12, 2000 with the new licensee, Seal Rock. The staff approved the KCBA(TV) TBA arrangement in Footnote 3 of the January 5, 2000 letter, stating that "AK Media's [TBA] with Seal Rock, which is limited to 'up to 15%' of the broadcast hours per week of KCBA(TV), would not be attributable to AK Media."⁶⁴

31. The KCBA(TV) TBA arrangement is identical in all material respects to the KION(TV) LMA arrangement,⁶⁵ except that KCBA(TV) is the brokered station while AK Media, the licensee of KION(TV), is the broker, and the TBA expressly limits the amount of programming to be provided under the TBA to 15% of KCBA(TV)'s weekly programming hours, as set forth in Attachment I to the agreement.⁶⁶ Under the Commission's 1999 *Attribution Order*, LMAs became generally attributable to

⁵⁹ Buckley Comments in reply to March 28, 2002 Letter of Inquiry, Page 3.

⁶⁰ Buckley Comments in reply to March 28, 2002 Letter of Inquiry, Page 5.

⁶¹ January 5, 2000 Letter to Steven J. Stone, Esq. et al, at page 3.

⁶² January 5, 2000 Letter to Steven J. Stone, Esq. et al, at page 4-6.

⁶³ See *Public Notice*, "Processing of Applications Proposing Local Marketing Agreements," Report No. 54161 (June 1, 1995); *WGPR, Inc.*, 10 FCC Rcd 8140, 8141 (1995); *Main Studio and Program Origination Rules (Clarification)*, 3 FCC Rcd 5024 (1998), *recon. denied in part and granted in part*, 7 FCC Rcd 6800 (1992).

⁶⁴ January 5, 2000 Letter to Steven J. Stone, Esq. et al, at page 2, n.3.

⁶⁵ Instead of an Option Agreement, as was the case with the KION(TV) LMA arrangement, AK Media and Seal Rock have entered into a Right of First Refusal Agreement. This fact has no bearing on our analysis.

⁶⁶ According to the TBA, Ackerley provides programming from 5:00-8:00 p.m., and from 10:00-11:00 p.m., Sunday through Saturday. See Attachment I to Time Brokerage Agreement between Seal Rock and AK Media. This block of time is not to exceed 15% of KCBA(TV)'s weekly broadcast hours.

the brokering station unless the LMA covers no more than 15% of the weekly broadcast hours of the brokered station. The KCBA(TV) TBA and related arrangements appear intended to comply with this standard by reciting compliance with the 15% criterion. After examining the full extent of the relationship between Ackerley and Seal Rock, including, in particular, the joint sales arrangement between AK Media and Seal Rock as well as Ackerley's response to the staff's inquiry letter of March 28, 2002, we do not believe that the 15% limitation recited in the TBA is sufficient to avoid attribution. The combination of agreements raises a level of concern sufficient enough for the Commission to closely examine the facts of this particular case.

32. Section 6 of the KCBA(TV) TBA states that "[AK Media] shall retain all advertising and other revenues, including accounts receivable, arising from or relating to the [programming provided under the TBA] and to programming provided by [Seal Rock], during the term hereof (other than network compensation revenues)..."⁶⁷ Thus, as written Ackerley has a right to collect advertising revenues arising from all non-network programming, and it appears that Seal Rock may receive programming free of charge. Moreover, based on Ackerley's response to the staff's March 28, 2002 letter of inquiry and Buckley's reply, it does not appear that Seal Rock employees have an affirmative obligation to actively pursue programming options for KCBA(TV). Rather, as acknowledged by Ackerley in the response to the March 28, 2002 inquiry letter, Ackerley personnel assist in the acquisition of KCBA(TV) programming, as well as make programming suggestions to Kriste. Buckley correctly notes that Ackerley has failed to provide any instances where Kriste has refused Ackerley's programming suggestions. Because Seal Rock, by the terms of the TBA and related agreements, does not have the right to collect advertising revenue from non-network programming not included within the 15% provided under the TBA, Kriste does not have an economic incentive to refuse such programming suggestions by Ackerley.

33. In the *Attribution Order*, the Commission "declin[ed] to impose new rules attributing [Joint Sales Agreements] as long as they deal primarily with the sale of advertising time and do not contain terms that affect programming or other core operations of the stations such that they are, in fact, substantively equivalent to LMAs."⁶⁸ Based on the factors discussed in Paragraph 32 above, we conclude that Section 6 of the TBA and related agreements with Seal Rock do not provide the licensee with an economic incentive to control the 85% of programming not provided by the broker under the LMA. As a result, we conclude that these agreements together are "substantively equivalent" to an LMA for more than 15% of KCBA(TV)'s weekly broadcast hours. Consequently, as the KCBA(TV) TBA and related agreements between Seal Rock and AK Media are currently constructed, Ackerley is in violation of the local broadcast television multiple ownership rule, and grant of the KION(TV) transfer application would result in a further violation of the local broadcast television multiple ownership rule. Since this is a case of first impression interpreting language in the Commission's *Attribution Order*, we will not impose sanctions on Ackerley as a result of the current violation of the local television multiple ownership rule, but will condition grant of the KION(TV) application upon removal of any contractual right or other arrangement that would result in the broker being entitled to advertising revenues not resulting solely from the 15% of programming provided under the TBA. As a result of this order, all advertising revenues received by the broker should be associated with the discrete blocks of time purchased, as set forth in Attachment I to the current TBA.⁶⁹ In order to determine whether the parties have reformed the TBA and related arrangements consistent with our instructions and Commission policies, we direct that the

⁶⁷ See April 3, 2002 Letter from James Winston, Esq., Exhibit C.

⁶⁸ *Attribution Order*, 14 FCC Rcd at 12612-12613.

⁶⁹ Our holding is based on the understanding that the broadcast hours listed in Attachment I to the TBA constitute 15% of KCBA(TV)'s weekly broadcast hours. Of course, Ackerley is entitled to advertising revenue associated with any additional programming provided, as long such programming is at or below the 15% threshold.

amended TBA be submitted to the Commission for review within 30 days of the release date of this order.⁷⁰

34. With respect to Congressman Farr's contention that Ackerley failed to abide by the staff's previous finding that stations KION(TV) and KCBA(TV) maintained separate personnel and facilities, the January 5, 2000 letter noted that the licensee intended to retain two employees, one of which was management, and that this was consistent with Commission policy.⁷¹ Here Ackerley has demonstrated that at least two employees, one of which is management, are employed and solely accountable to the licensee of KCBA(TV). Apart from his assertion, the Congressman has not supported by affidavit or other probative information that Ackerley has not maintained a separate two-member staff or that the station facilities have not been operated as Ackerley had earlier stated. Concerning Ackerley's service and programming, the Commission has eliminated previous guidelines requiring that television licensees provide specified quantities of certain types of nonentertainment programming, granting licensees instead broad discretion to choose, in good faith, which issues are of concern to the community and the best way to address those issues.⁷² Therefore, we do not believe that Congressman Farr's allegation that the TBA arrangement failed to adequately serve the Monterey-Salinas market warrants further inquiry.

35. The allegations of market concentration in the Monterey-Salinas market raise issues similar to those discussed with respect to the Syracuse market. The commenters contend that if the transaction is approved, Clear Channel will dominate the local advertising market, as it will have substantial holdings of the local radio, television and billboard outlets, and that it will be able to leverage its holdings in one medium to benefit its holdings in another.

36. BIA data shows that, of those radio stations identifying the Monterey-Salinas-Santa Cruz Arbitron metro as their "home," Clear Channel stations garner approximately 30% of both the audience and the advertising revenue, less if "out-of-market" stations are included. Indeed, the highest rated station in the metro is KGO(AM), whose home metro is San Francisco. Although Buckley contends that Clear Channel earns approximately 50% of the radio advertising revenues in the Monterey-Salinas area according to data supplied by Miller, Kaplan, Araso & Co.,⁷³ it has not submitted that data. With regard to the television market, Ackerley owns KION(TV) in the Monterey-Salinas-Santa Cruz DMA, and, as discussed above, has both a TBA and a joint sales arrangement with KCBA(TV). The two stations earn approximately 48% of the television advertising revenue in this market.⁷⁴ However, there is no data in the record with respect to the advertising revenues earned by the local cable systems. Nor is there any evidence in the record with respect to who owns billboards in the Monterey-Salinas-Santa Cruz area except for Congressman Farr's statement that he understands that Clear Channel owns local outdoor advertising businesses in nearby San Jose and Fresno.⁷⁵

⁷⁰ See *Id.* at 12600-12601. We intend this requirement to apply to whatever entity functions as the broker of KCBA(TV)'s time under the TBA, whether that is Ackerley as currently constituted, or Ackerley as controlled by Clear Channel.

⁷¹ See *WGPR, Inc.*, 10 FCC Rcd at 8143; *Main Studio and Program Origination Rules (Clarification)*, 3 FCC Rcd 5024 (1988). See, also, Letter to Steven J. Stone, et al, at page 6.

⁷² See *Commercial Television Stations*, 98 FCC 2d 1076, 1090-1092 (1984).

⁷³ See Comments of Buckley at 5; Reply Comments of Buckley at 2.

⁷⁴ Of the \$36.4 million of advertising revenues in the Monterey-Salinas-Santa Cruz DMA, KION(TV) earned \$8 million (22%) and KCBA earned \$9.3 million (25.5%).

⁷⁵ The commenters also do not provide any evidence about the ownership and revenues earned by other media outlets, for example, newspapers.

37. As we stated above, consistent with our procedure with regard to radio station applications, until the local radio ownership proceeding is completed, we will presume that radio advertising and television advertising constitute separate product markets, although we will consider the particular facts of each case. Here, we find no evidence in the record that raises a substantial and material issue that radio and television advertising do not constitute separate markets in the Monterey-Salinas area. We also find no evidence in the record that raises a substantial and material issue that Clear Channel would be able to dominate the local media advertising market. Accordingly, on this record, we will analyze Clear Channel's radio/television combination only pursuant to the numerical ownership/voice count limitations of the radio/television cross-ownership rule. In contrast to the situation in the Syracuse market, Clear Channel meets the numerical ownership/voice count restrictions of the radio/television cross-ownership rule. The Commission took markets the size Monterey-Salinas into consideration in developing the bright-line numerical ownership/voice count limitations of the radio/television cross-ownership rule. Consequently, we do not believe that grant of the KION(TV) application would violate the spirit and goal of the radio/television cross-ownership rule.

V. CONTINUING SATELLITE EXCEPTION

38. Clear Channel proposes to continue operating KMTZ(TV), Coos Bay, OR and KMTX-TV, Roseburg, OR as satellites of KMTR(TV), Eugene, OR pursuant to Note 5 of Section 73.3555 of the Commission's Rules, which exempts satellite stations from application of the local television multiple ownership rule.⁷⁶ The Commission originally granted satellite status to KMTZ(TV) and KMTX-TV in 1991 and 1992, respectively, and authorized continued satellite status for both stations on two separate occasions.⁷⁷ Clear Channel contends that the circumstances underlying the previous grants of continuing satellite status have not changed.

39. Pursuant to the Commission's television satellite policy, as set forth in *Television Satellite Stations*, an applicant for satellite status is entitled to a presumption that the proposed satellite operation is in the public interest if it meets three criteria: (1) there is no City Grade overlap between the parent and the satellite; (2) the proposed satellite would provide service to an underserved area; and (3) no alternative operator is ready and able to construct or to purchase and operate the satellite as a full-service station.⁷⁸ Applications meeting these criteria, when unrebutted, will be viewed favorably by the Commission. If an applicant cannot qualify for the presumption, the Commission will evaluate the proposal on an *ad hoc* basis, and grant the application if there are compelling circumstances that warrant approval.⁷⁹

40. With respect to the first criterion, Clear Channel has supplied an engineering exhibit demonstrating that no City Grade overlap exists between KMTR(TV) and either KMTX-TV or KMTZ(TV). With respect to the second criterion, Clear Channel has demonstrated, by using our "transmission" test, the respective areas are underserved. The "transmission" test deems an area underserved if there are two or fewer full-service television stations licensed to a proposed satellite's community of license.⁸⁰ Only one other full-service television station is licensed to Coos Bay, KMTZ(TV)'s community of license, and only two other stations are licensed to Roseburg, KMTX-TV's community of license.

⁷⁶ 47 C.F.R. §73.3555, Note 5.

⁷⁷ See Letter to Wicks Broadcasting Group Limited Partnership from Barbara J. Kreisman, Chief, Video Services Division (October 11, 1995); Letter to AK Media Group, Inc. from Barbara J. Kreisman, Chief, Video Services Division (March 12, 1999).

⁷⁸ *Television Satellite Stations*, 6 FCC Rcd 4212, 4213-4214 (1991) (subsequent citations omitted).

⁷⁹ *Id.* at 4214.

⁸⁰ *Id.* at 4215.

41. As to the third criterion, we note that the Commission has approved continuing satellite status for these stations on two occasions. Clear Channel asserts that, as was the case in 1999, no prospective purchaser would be interested in either of the satellite stations on a “stand alone” basis. In support, Clear Channel submits an October 15, 2001 letter from Brian Cobb, who states that it would be difficult for KMTR(TV) to compete with other stations in the Eugene, OR market without the accompanying satellites since most other stations also provide multiple signals. Moreover, he states that the satellites provide inadequate coverage of the Eugene, OR market due to rugged terrain. In light of this fact, if the satellites were to operate as “stand alone” stations, they would do so as independents. The likelihood of their survival in such circumstances would be slim, according to Brian Cobb. Clear Channel further argues that the “general downturn in the U.S. economy has had a negative impact on the broadcast industry and has made it even more difficult for television stations to be profitable.

42. While we do not believe that this showing meets our “presumptive” satellite standard since Clear Channel has failed to adequately demonstrate compliance with the third criterion, we do believe that Clear Channel’s showing is strong enough to justify continued satellite status for KMTZ(TV) and KMTX-TV under our *ad hoc* satellite procedures. We agree that, given their inadequate signal coverage, their history as satellites, and the economic necessity to provide multiple signals in the Eugene market, it does not appear likely that an alternative operator would be willing to operate either of the satellites as full-service stations. The factors upon which we based our continuing satellite authorizations in 1995 and 1999 have not changed to such an extent as to alter that determination here. Although the showing does not meet the “presumptive” satellite standard, we do believe “compelling circumstances” justify continuing satellite status in this instance. Thus, we conclude, continued operation of KMTZ(TV) and KMTX-TV as satellites of KMTR(TV) would serve the public interest.

VI. ADMINISTRATIVE MATTERS

43. We have reviewed the proposed merger and related pleadings and find that the applicants are fully qualified and that grant of the transfer of control of the Ackerley broadcast stations to Clear Channel will serve the public interest, convenience, and necessity.

44. Accordingly, IT IS ORDERED, That the informal objections of Douglas F. Elznic and Congressman Sam Farr, the comments of Alex Sheina, and the petition to deny of Buckley Broadcasting of Monterey, ARE GRANTED IN PART as set forth above, and DENIED IN ALL OTHER RESPECTS.

45. IT IS ORDERED, That the requests for 12 months to come into compliance with the radio/television cross-ownership rule, 47 C.F.R. §73.3555(c), in the Binghamton, NY; Rochester, NY; Santa Maria, CA; Syracuse, NY; and Utica, NY markets ARE GRANTED, but within 12 months of consummation of the transaction, Clear Channel is directed to file the applications necessary to bring it into compliance in all five markets.

46. IT IS FURTHER ORDERED, That continued television satellite authorization, pursuant to Note 5 of Section 73.3555, for KMTZ(TV), Coos Bay, Oregon and KMTX-TV, Roseburg, Oregon, satellite stations of KMTR(TV), Eugene, Oregon IS GRANTED.

47. Accordingly, IT IS ORDERED, That the application for consent to the transfer of control of Ackerley Media Group, Inc., parent of licensee of KION(TV), Monterey, CA, application BTCCT-20011017ACK, IS GRANTED, conditioned upon reformation of the January 12, 2000 Time Brokerage Agreement between AK Media Group, Inc., and Seal Rock Broadcasters, L.L.C., to remove any contractual right or other related arrangement entitling the broker to advertising revenues not resulting solely from the 15% of programming provided under Attachment I of the agreement.

48. Accordingly, IT IS ORDERED, That the applications for consent to the transfer of control of Ackerley Media Group, Inc., Central NY News, Inc., and Ackerley Broadcasting Fresno, LLC, wholly owned subsidiaries of the Ackerley Group, Inc., applications BTCCT, BTCCTA, BTCCTL, BTC, BTCH, BTCTTV, BTCTT, BTCFT 20011017ACI-ACJ, and ACL-AEF, as listed in Appendix A, ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene Dortch
Secretary

Appendix A

Licenses to be Transferred from the Shareholders of Ackerley Group, Inc. to Clear Channel Communications, Inc.

Station	Community of License	File Number	Facility ID Number
KCOY-TV	Santa Maria, CA	BTCCT-20011017ACI	63165
KTVF(TV)	Fairbanks, AK	BTCCT-20011017ACJ	49621
KION(TV)	Monterey, CA	BTCCT-20011017ACK	26249
KFTY(TV)	Santa Rosa, CA	BTCCT-20011017ACL	34440
KGET(TV)	Bakersfield, CA	BTCCT-20011017ACM	34459
KVIQ(TV)	Eureka, CA	BTCCT-20011017ACN	42640
KKFX-CA	San Luis Obispo, CA	BTCTTA-20011017ACO	33870
KMTR(TV)	Eugene, OR	BTCCT-20011017ACP	35189
KMTZ(TV)	Coos Bay, OR	BTCCT-20011017ACQ	35183
KMTX-TV	Roseburg, OR	BTCCT-20011017ACR	35187
KMOR-LP	Eugene, OR	BTCTTL-20011017ACS	25325
KVOS-TV	Bellingham, WA	BTCCT-20011017ACT	35862
KHHO(AM)	Tacoma, WA	BTC-20011017ACU	18523
KJR(AM)	Seattle, WA	BTC-20011017ACV	48386
KBTB(FM)	Seattle, WA	BTCH-20011017ACW	48385
KUBE(FM)	Seattle, WA	BTCH-20011017ACX	48387
KO6LA	Healy, AK	BTCTTV-20011017ACY	49626
K07NJ	Delta Junction, AK	BTCTTV-20011017ACZ	49617
K44DN	Paso Robles, CA	BTCTT-20011017ADA	63172
K57AV	Santa Cruz, CA	BTCTT-20011017ADB	26248
K59AY	Hollister, CA	BTCTTV-20011017ADC	26247
K08HJ	Orleans, CA	BTCTTV-20011017ADD	42632
K08LD	Miranda, CA	BTCTTV-20011017ADE	42633
K10FS	Rio Dell, CA	BTCTTV-20011017ADF	42631
K10HX	Garberville, CA	BTCTTV-20011017ADG	42637
K10KY	Shelter Cove, CA	BTCTTV-20011017ADH	42639
K10EN	Willow Creek, CA	BTCTTV-20011017ADI	42638
K11NE	Hoopa, CA	BTCTTV-20011017ADJ	42634
KO3CQ	Mapleton, OR	BTCTTV-20011017ADK	39855
K05DF	Mapleton, OR	BTCTTV-20011017ADL	39854
DW45AE	Massena, NY	BTCTTL-20011017ADM	5775
DK11HW	Mapleton, OR	BTCTTV-20011017ADN	39853
K19AD	Tri City, OR	BTCTT-20011017ADO	35184
K31AE	Sutherlin, OR	BTCTT-20011017ADP	35172
K46AS	Coos Bay, OR	BTCTT-20011017ADQ	35188

K60DQ	Eugene, OR	BTCTT-20011017ADR	71616
K60DO	Cottage Grove, OR	BTCTT-20011017ADS	61126
K61EH	Powers, OR	BTCTT-20011017ADT	53295
K277AB	Edmonds, WA	BTCFT-20011017ADU	35019
WIVT(TV)	Binghampton, NY	BTCCT-20011017ADW	11260
WIXT-TV	Syracuse, NY	BTCCT-20011017ADX	73113
WBGH-CA	Binghampton, NY	BTCTTA-20011017ADY	15569
WOKR(TV)	Rochester, NY	BTCCT-20011017ADZ	73371
WUTR(TV)	Utica, NY	BTCCT-20011017AEA	57837
WWTI(TV)	Watertown, NY	BTCCT-20011017AEB	16747
W07BA	Syracuse-Dewitt, NY	BTCTTV-20011017AEC	73114
W63AE	Oneonta, NY	BTCTT-20011017AED	57823
KGPE(TV)	Fresno, CA	BTCCT-20011017AEF	56034

**STATEMENT OF COMMISSIONER MICHAEL J. COPPS
APPROVING IN PART, DISSENTING IN PART**

*In the Matter of Transfer of Control of Certain Subsidiaries of the
Ackerley Group, Inc. to Clear Channel Communications, Inc.*

Approval of this transaction would result in new radio-television station combinations in 11 markets. In five of those 11 markets, the transactions would exceed the Commission's rules limiting common ownership of radio and television stations. I cannot support the waiver of the Commission's local television-radio ownership rule in those markets, and thus dissent from the approval of transfers in those five markets.

The television markets in which Clear Channel will acquire stations in violation of our local ownership restrictions are not among the largest or most diverse in the nation. Indeed, they range from Syracuse, NY, the 71st largest market, to Utica, the 168th largest. Our ownership rules, as well as the statute on which those rules are based, permit ownership of multiple stations in a direct relationship to the size of the market – the larger the market, the more stations one owner may own. Congress and the Commission set those limits to ensure diversity in those markets. I do not see where a waiver of those limits served the public interest.